

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

U.S. TelePacific Corp. (U-5721-C),

Complainant,

vs.

Verizon California, Inc. (U-1002-C),

Defendant.

Case 03-10-030  
(Filed October 10, 2003)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the schedule, assigns a presiding officer, and addresses the scope of the proceeding, following a Prehearing Conference (PHC) held on December 16, 2003.

**Background**

Complainant U.S. TelePacific Corp. (TelePacific) provides facilities-based and resold local, intraLATA, and interLATA telecommunications services in California. TelePacific alleges that defendant Verizon California, Inc. (Verizon)

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

has violated the requirements of sections 451 and 453 by failing to correct persistent trouble with a DS-3 transport facility used by TelePacific to provide service to certain customers in Verizon's Los Angeles service territory.

TelePacific alleges that Verizon's response to TelePacific's problems with the DS-3 facility indicates that Verizon provides TelePacific with service of a lower quality than it provides to itself and its own retail customers. TelePacific seeks the imposition of fines for Verizon's failure to take appropriate action related to the DS-3 problem, and also requests that the Commission issue an Order Instituting Investigation (OII) into Verizon's practices in provisioning service and facilities to competitors.

Verizon contends that it acted properly in responding to TelePacific's reports of trouble with the DS-3 facility and that any delay in the ultimate resolution (using a different DS-3 facility) was the result of TelePacific's behavior. Verizon also asserts that the problems with the DS-3 facility do not support the expansive claims TelePacific makes about Verizon's operations.

### **Motion to Dismiss**

At the PHC, Verizon indicated that it would file a motion to dismiss the complaint. Counsel for both parties agreed to expedite discovery in order to enable a prompt resolution of the motion to dismiss.

### **Scope of the Proceeding**

#### **Factual issues**

Because Verizon's motion to dismiss would resolve the entire proceeding, an Evidentiary Hearing (EH) will only be necessary if the motion to dismiss is denied. At that point, the material facts in dispute would include:

- whether Verizon delayed its response to the DS-3 facility problem identified in the complaint;
- whether TelePacific contributed to the delay;
- whether the DS-3 facility problem occurred because of any improper action of Verizon.

### **Legal issues**

In its prayer for relief, TelePacific seeks the issuance of an OII as part of the resolution of this proceeding. The Presiding Officer's Decision (POD) that would conclude this case if an EH were held is not, however, the appropriate vehicle for issuing an OII. The POD becomes the decision of the Commission in this proceeding if no appeal or request for review is filed, as set out in section 1701.2. An OII, however, is an order of the Commission in the first instance. This aspect of TelePacific's prayer for relief cannot be granted, and will not be part of this proceeding.<sup>2</sup>

### **Discovery**

The parties have agreed to undertake formal discovery promptly, to enable resolution of Verizon's motion to dismiss. In view of the schedule for this proceeding, set forth below, it is important that any discovery disputes be resolved expeditiously. The parties must promptly meet and confer in a good faith effort to resolve any disputes. If that fails, any party may promptly file a written motion in accordance with Rule 45.

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<sup>2</sup> At the PHC, the Administrative Law Judge (ALJ) noted that TelePacific was free to file a motion seeking to change this determination if it had persuasive authority to bring to the attention of the ALJ and the assigned Commissioner.

Parties shall follow the requirements set forth in Appendix A attached hereto regarding prepared written testimony and exhibits.

### **Schedule**

The parties have agreed to the following schedule for this proceeding:

December 17, 2003	Verizon Motion to Dismiss filed and served
January 23, 2004	Discovery completed
February 13, 2004	TelePacific opposition to motion to dismiss filed and served
February 24, 2004	Verizon reply to opposition filed and served
March 30, 2004	Concurrent opening testimony distributed to parties and ALJ
April 14, 2004	Concurrent rebuttal testimony distributed to parties and ALJ
April 20, 2004 9:30 a.m.	Evidentiary Hearing, Commission Courtroom, San Francisco

At the conclusion of the EH, if needed, a schedule will be set for briefing and submission of the case. It is my goal to close this case within the twelve-month timeframe for resolution of adjudicatory proceedings, and this schedule meets that goal. At this time, I foresee no extraordinary circumstances which would warrant an extension of the schedule. The presiding officer may, for good cause shown, alter this schedule within the statutory timeframe.

**Category of Proceeding and Need for Hearing**

In the Instructions to Answer, the Commission determined that this case is an adjudicatory proceeding, subject to hearing; no party has timely appealed the final determination.

**Assignment of Presiding Officer**

ALJ Simon will be the presiding officer.

**Ex Parte Rules**

Ex parte communications are prohibited in adjudicatory proceedings under § 1701.2(b) and Rule 7.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge Simon.
4. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated December 26, 2003, at San Francisco, California.

/s/ GEOFFREY F. BROWN

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Geoffrey F. Brown  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated December 26 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN  
Helen Friedman

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

## **APPENDIX A: EXHIBITS**

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### **Prepared Testimony**

See Article 17 of the Commission's Rules of Practice and Procedure for various requirements (Rule 68, need for subject index; Rule 70, exhibit size; etc.). For the purposes of ascertaining whether a subject index is required, include the individual pages of any attachment(s) in the total page count. A subject index shall identify all such attachments, as well as the sections/subsections within the prepared testimony. Generally, prepared testimony should be bound with any attachments to it, unless size considerations warrant a different practice. Each attachment to prepared testimony shall be separately tabbed to facilitate reference.

### **Service of Exhibits**

One copy of all prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony should **not** be filed with the Commission's Docket Office.

### **Corrections to Exhibits**

Minor corrections: only minor corrections to an exhibit may be made orally from the witness stand.

Major corrections: all corrections, other than minor corrections, shall be made in advance of hearings, in writing, in order to provide timely notice to the ALJ and other parties.

- 1) Corrections shall use "redline" format conventions which permit comparison of the original and revised text (i.e. line out or strikeover the original text being deleted; clearly indicate, in a readily distinguishable manner, the substitute or additional text).
- 2) Each corrected page should be marked with the word "revised" and the revision date.

## APPENDIX A: EXHIBITS

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- 3) Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. (Example: Exhibit 2-A is the first correction made to Exhibit 2.) Corrections to exhibits with multiple sponsors will also be identified by chapter number. (Example: Exhibit 5-2-B is the second correction made to Chapter 2 of Exhibit 5, where different witnesses sponsor chapters 1 and 2.)

### Identification of Exhibits in the Hearing Room

#### Number of copies:

- 1) Prepared testimony: the sponsoring party should provide the **one copy to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room.
- 2) Other exhibits: the sponsoring party should provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. (This directive supercedes Rule 71.)
- 3) Confidential exhibits: at least one of the copies provided to the ALJ must be in an **unsealed envelope** measuring no more than 10" by 13".

#### Formatting requirements:

- 1) The ***upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp.*** (Rule 70.) This applies to prepared testimony as well as other exhibits—if there is insufficient room in the upper right hand corner for an exhibit stamp, prepare a cover sheet for the exhibit. If a party “premarks” an exhibit in ***any*** way, it should do so in the upper left hand corner of the cover sheet.
- 2) If any exhibit provided to the ALJ in the hearing room consists of more than one page, the pages shall be bound together or otherwise

fixed in a secure fashion (e.g. brads, acco fasteners, velo binding).  
Loose-leaf binders should be avoided if possible.

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Premarking Exhibit numbers: At the discretion of the ALJ, a block of exhibit numbers may be reserved for each party. A party that “premarks” exhibits with numbers should plan to use them at hearing in consecutive numerical order, however.

### Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness’ counsel before the witness takes the stand on the day the exhibit is to be introduced.

Exception: A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness’ spontaneous reaction.

Confidential documents: If parties have agreed to consult prior to disclosure, as in the case of **confidential documents**, they shall do so before using the documents in cross-examination, unless a different procedure regarding confidential documents has been arranged in advance with the ALJ.

(END OF APPENDIX A)